IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210

CWP-20569-2019 (O&M)
Date of decision: 01.10.2024

M/S SHYAMJI TRANSPORT COMPANY ......Petitioner

VERSUS

FOOD CORPORATION OF INDIA AND OTHERS ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

*****

Present: - Mr. Alok Mittal, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for the respondents-Food Corporation of India.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 04.01.2019 passed by the Grievance Redressal Committee, Food Corporation of India, Zonal Office (N), Noida whereby claim of the petitioner for re-fixation of the distance was rejected and it was ordered to pay as per the distance/charge given in the DNIT. A further prayer has been made by the petitioner for seeking directions to respondents No.1 and 2 to recalculate the dues and to release the amount of bill submitted by the petitioner along with interest @ 18% per annum.

FACTS

2. Briefly summarized the facts of the present case are that the respondent-Food Corporation of India invited a composite tender for the appointment of loading and unloading/Handling & Transport Contractor at Food Corporation Depots/Godowns in FCI District Rohtak, under respondent No.2- Area Manager, Food Corporation of India, at Uchana Centre. The last date for receipt of tender was 23.03.2013. Finding the bid most responsive, the petitioner was declared as the successful bidder both technically and financially. The letter of allotment dated 17.07.2013 was accordingly issued to the petitioner. That on 26.07.2013, after receipt of the allotment letter and before joining at the work, the petitioner requested respondent No.2 to provide the distance from Storage points to Rail Heads, Uchana. A reply was received to the aforesaid letter from respondent No.2 that the distance had already been measured and also provided the measurement of the distance. The relevant extract pertaining to Rail Head Uchana was informed as under:-

Rail head Uchana

1.	*Baroda Hafed Complex Uchana*	*4.90 KM*
2.	*Mohendra & Sons Plinth Uchana*	*3.10 KM*
3.	*Dharamveer Plinth Uchana*	*3.80 KM*
4.	*Sajjan Plinth Uchana (HWC)*	*3.30 KM*
5.	*Sajjan Plinth Uchana (DFSC)*	*3.40 KM*
6.	*Nilam Sheokand Plinth Uchana*	*3.40 KM*
7.	*Sunita Jian Plinth Uchana*	*3.30 KM*
8.	*Manju Jain Plinth-I Uchana*	*3.30 KM*
9.	*Manju Jain Plinth-Il Uchana*	*3.30 KM*
10.	*HWC Campus Uchana via Bajrang W/B*	*3.30 KM*
11.	*Vijay Cottan Mill Uchana Via Bajrang W/B*	*3.20 KM*

12. Bijender Plinth Uchana"

3. The petitioner immediately sent a letter to the Area Manager-respondent No.2 that the distances, as provided, were not depicting correct measurement. The said letter dated 01.08.2013, submitted by the petitioner, was received by the respondent and certain clarification was sought about the basis of giving different distance. Without going into that part of the correspondence, the respondents decided to verify the distance and hence ordered to constitute a Committee to measure the actual distance between both the points. An order dated 16.08.2013 was passed to measure the distances between both the points through the different routes that were available. The above said Committee, however, did not submit any report. A request was submitted again by the petitioner for carrying out an expeditious calculation of the distance of various godowns from different routes so that the bills could be raised accordingly. Hence, respondent No.2 constituted another Committee which submitted its report dated 24.08.2013. The petitioner submitted a representation to the respondents to carry out proper measurement and recommendation of the routes since the Committee had mentioned about two routes, out of which one route was not motor-able as there were many hurdles like Schools, Govt. Schools and main bazaar and the movement of a heavy vehicle through the same was not viable even as per the observations of the Committee. Hence, respondent No.2 constituted another Committee and ordered that the report dated 24.08.2013 prepared and submitted by the Committee constituted vide office order dated 16.08.2013 be checked physically and to make clear recommendations as to which route should be considered for the loading of specials. The reference

made to the aforesaid Special Committee constituted vide order dated 10.09.2013 reads thus:-

> *No. S&C/HTC/Distance/Rok/2013/3541 dated 10.09.2013*
>
> *A committee of three Managers consisting Sh. S.P. Bhatia, Manager (Depot), Sh. Zile Singh, Manager (Depot) and Sh. K.K. Range, Manager (QC), FCI, B.C. Narwana is hereby constituted to examine the report dated 24.08.2013 submitted by the committee which was constituted vide this office order of even no. 2959 dated 16.08.2013 for measurement of the distance from various storage points of Uchana centre to Railhead, Uchana for the purpose of loading of specials at rallhead, Uchana.*
>
> *The committee is advised to examine the report deeply and give their recommendation on the following points:-*
>
> 1. *The routes mentioned in the report dated 24.08.2013 should be checked physically and it should be specifically recommended that which route is authorized and motor-able to carry the stocks from storage points to rail head through heavy vehicles.*
>
> 2. *It should also clearly recommend that which route should be considered for loading of specials.*
>
> *Sd/-*
>
> *Manager (Contract)*
> *For General Manager*
> *10.09.2013*

4. The above said Committee constituted on 10.09.2013 prepared its report dated 03.10.2013 and submitted the same to the Food Corporation of India wherein it was informed that the special cannot be loaded by short

routes as recommended by the previous Committee. The operative part of the said report dated 03.10.2013 is extracted as under:-

FCI/BG-NRW/HTC-UCHANA/2013-14 Dated 03.10.2013

COMMITTEE REPORT

In compliance to the General Manager FCI D.O., Rohtak Office Order No. S&C/HTD/Distance/ROK/2013/3541 dated 10.09.2013 a committee of following three officers was constituted to find out the distance of road/path ways during loading of specials at Uchana. Committee visited Uchana on 30.09.2013 and check physically the different roads and submit the report as under:-

(1) We have a visit via railhead to main chowk of Main Bazzar, Uchana. It is a purely residential area, having narrow gali(street type). The electrical wires above the road are very low at regular intervals. In addition to that the primary school are situated. Out of these schools one is private and other is Government Primary School. Hence not fit for movement of heavy food grain vehicle.

(2) The road from main bazaar, Uchana to Uklana Railway crossing is commercial. Public vehicle such as scooter, bike, car, tractor etc. remain standing here and there due to which vehicle loaded with food grains cannot move and there are quite chance of accident all the time.

(3) That at the end of main bazaar towards Uklana road Railway crossing big pipal and orange trees are standing. The Railway crossing remains closed a number of times due to which there remains traffic jam. Due to big trees, the heavy vehicles cannot run freely. Hence, this route is not fit for special loading.

(4) Then, we move from Uchana road Railway crossing toward Bajrang Dharam Kanta Maximum portion of the road was found badly damaged and is not motorable at present.

(5) We visited and checked a road from main road to opposite police station Uchana towards Rail Head Uchana. Following difficulties obstacles were observed in:-

i) Entry from main road towards so called link pathway/Anaj Mandi is not possible due to trees standing at the entry level of pathways.

ii) The said pathways are badly damaged and are not approved by Municipal Committee/PWD and any other authorities concerned.

iii) It is the private property of present colonizer as learnt orally from general public.

The previous committee has submitted this report of distance of all storing points through difference routes. Whereas, physically difficulties was observed during our inspection which have been enumerated above.

Hence it can be concluded that specials cannot be loaded via these routes.

(Emphasis Supplied)

5. The alternative route as approved by the said Committee in its order dated 03.10.2013 was thereafter approved by the Contract Division, Finance Division, Area Manager of respondent No.1 whereupon the petitioner initiated the conclusion of the work. The bills were submitted and as many as 06 bills were duly cleared by the respondents. However, the

subsequent bills submitted to the tune of Rs. 6,89,047.74, were withheld by the respondents without assigning any reasons. At no point of time, the respondents disputed the distance as measured and claimed for the route or the genuineness of the route taken by them.

6. A representation dated 20.03.2014 was hence sent by the petitioner to the respondent No.2 regarding release of the payment of bill No.7 but neither the same was replied to nor the payment released even though the subsequent bill No. 12 was totally paid. The respondents deducted and withheld certain amounts from Bill No. 08, 09, 10, 11, 13, 14 and 15 to a total of Rs. 10,94,735/- approximately, without assigning any reason. Representations were repeatedly submitted by the petitioner but the same were not responded to, hence, the petitioner approached this Court by way of CWP-16655 of 2016 seeking release of the aforesaid amount of Rs. 10,94,735/- towards the pending bills, Rs. 6,50,000/- against security and Rs. 13,00,000/- towards the Bank Guarantee, alongwith interest @ 18%. p.a. The said writ petition was disposed of by this Court vide order dated 17.08.2016 directing the respondent to take a decision on the letter dated 20.03.2014 and the representations dated 05.09.2014 and 06.06.2016 submitted by the petitioner, in accordance with law and by passing a speaking order and after affording an opportunity of hearing to him.

7. That in compliance to the aforesaid order, a non-speaking order dated 21.11.2016 was passed by the respondents rejecting the claim of the petitioner.

8. The said order was challenged yet again before the High Court in CWP-3458 of 2017 which was again disposed of vide order dated 04.09.2018 with a liberty to the petitioner to approach the Grievances Redressal Committee, Noida. The said Forum was directed to consider and decide the claim of the petitioner expeditiously and preferably within a period of 03 months from the date of laying of the claim by the petitioner.

9. It is further submitted that the petitioner had also sought information under the Right to Information Act, 2005 pertaining to the official notings as per which the storage points had been got measured by the respondents for making payment and the necessary approvals that had been granted. The same were also furnished to the respondents and were placed before the Grievance Redressal Committee. Nonetheless, vide order dated 04.01.2019, the Grievance Redressal Committee also rejected the claim of the petitioner. Hence, the present writ petition.

10. A written statement had been filed on behalf of the respondents wherein the factual aspects pertaining to the formation of Committee as well as the report submitted by it were not disputed. It is further averred that the petitioner is not entitled to the demand raised by him and the order by the Grievance Redressal Committee has been passed in accordance with the terms and conditions of the MTF. Reliance was placed on Clause -2 B (II) claiming that it was obligatory on the part of the tenderer to get himself fully acquainted with the size and location of the godowns viz.-a-viz. loading/unloading points, before submission of tenders and rates quoted by them for the same. It was also averred that the petitioner had duly furnished

his forwarding letter and in the operative part of the bid letter that he had acquainted himself with all the terms and conditions of the tender document and gave an undertaking to abide by the same. It is also stated that after the award of the contract vide letter dated 17.07.2013, the letter was sent by the petitioner on 26.07.2013, however, the said dispute was not maintainable. The distances were always incorporated in the DNIT and the petitioner could not have disputed the distances after submission of the bid. Nonetheless, a response was sent and the bills were also inadvertently cleared. Later, during the scrutiny of the bill submitted by the petitioner, it was found that he had claimed and received payments on the higher side as against the actual payment due. The excess amount released was adjusted in the subsequent bills and accounted for in terms of the MTF. All the bills had already been cleared and admissible liability paid as per the standard distance already available prior to the present tender enquiry which was drawn on the basis of the previous contract(s) as well as the subsequent contract for the same center/storage points to the nearest Rail head. It is also averred that all the aspects have been properly considered by the Grievance Redressal Committee in its order dated 04.01.2019 and a detailed speaking order, noticing all the aforesaid aspects, had been passed on light of the essential terms and conditions of the handling and transport contract for Uchana Centre (Division Rohtak). Further, a plea was raised that there was no way to ascertain as to whether the petitioner had actually taken the longer route for which the distance payment has been claimed or had been transported through the shortest route.

11. No replication to the written statement has been filed.

ARGUMENTS

12. Learned Counsel appearing on behalf of the petitioner has argued that the schedule of rates and services for handling transport contract as appended as Part 'B' of the tender document dated 23.03.2013 shows the rates were to be quoted per 100 bags. It also prescribes a separate additional payment for the distance to be travelled but no specific distance has been capped therein and only a rate per km has been provided. The petitioner had submitted a bid @ 110.85% over and above the schedule rates and the distances were required to be actually measured. In furtherance thereto, the petitioner had submitted the request to the respondents to convey the distance. The communication sent by him established that the distances were correctly measured and accordingly, the said objection was raised before the competent authority whereupon a Committee of its officials was constituted by the respondent for verifying the routes examined and to physically check the best roads that were available and to make an appropriate recommendation of the route thereupon.

13. It is submitted that Part 'B' of the schedule as appended to the DNIT specifically provides that the distance, as fixed by the Chief Engineer PWD or any other officer nominated by him or by the General Manager of the Food Corporation of India or checked by an officer acting on his behalf rounded off to the nearest 0.50 kms, has to be filed. The said clause reads thus:-

> *"The distance will be reckoned as fixed by the Chief Engineer PWD or any officer nominated by him or by the General Manager Food Corporation of India or*

checked by an officer acting on his behalf rounded off to the nearest 0.50 kms (applicable to item-7).”

14. It is contended that the Committee constituted by the Food Corporation of India examined the different available routes and their respective distances and made its recommendation in its report dated 03.10.2013. As per the same, five routes were found not suitable and feasible for the special loadings. The office considered the different routes and the measurements recommended by the Committees and came to its conclusion, as per the office noting supplied under the Right to Information Act, 2005. The true translated extract thereof reads thus:-

> *“As per the order of this office dated 10.09.2013, Committee of 3 Manager was constituted (page 69/C), this Committee was constituted to inquire and give the recommendation of the previous committee which was constituted on 24.08.2013. Committee was told to clearly provide regarding the route from Uchana Centre to different storage points to rail head which is motorable and the route which is right for loading the special. Now, this committee has given the report which is annexed at page A as per the committee*
>
> 1. *The heavy vehicles cannot play for loading the special from Uchana Main Bazar to rail head, Uchana.*
>
> 2. *Heavy vehicle cannot be played from main chowk to main bazar Uchana to Uklana road because of the crowded area on this way.*
>
> 3. *On the railway crossing on the Uchana road there are big tree because of that the jam was there. Because of that the heavy vehicle cannot be plied.*

4. *Near the railway crossing on Uchana Road near Bajrang Dharam Kanta the road is damaged, which is not motorable.*

5. *Opposite the police station, Uchana two ways lead to rail head on that ways:-*

A. *From the main road the entry is not possible because there are many trees.*

B. *The whole path is damaged and that is not approved from any authority.*

C. *This way is property of some private colonizer.*

D. *At the end committee came to the conclusion that from the above said ways, it is not possible to load the special.*

E. *First Committee measured the distance are as follows:-*

Sr. No.	*Name of Godowns to Rail Head*	*Distance from the above said way*	*Distance from different way*
1.	*HWC, Uchana*	*2.8 km*	*3.4 km*
2.	*PEG, Karsindhu*	*9.8 km*	*9.8 km*
3.	*Hafed Godown, Baroda*	*5.7km*	*6.6 km*
4.	*Mahindra Cotton Mills*	*3.9 km*	*4.8 km*
5.	*Sajjan and Neelam Plinth*	*4.2 km*	*5.0 km*
6.	*Sanju Jain, Sunita*	*4.1 km*	*4.9 km*

	Jain and Aruna Jain Plinth		

As per the above said report and analysis of committee the distances which were shown at Point A are not motorable or on this way the heavy vehicies cannot be played (for loading the specials). After that the other ways is shown in column B, hence in column B, the ways are shown can be considered for the payment to HTC and the loading of specials through these ways are also got received with work slip from manager contract BG Narwana with two bills is also verified.

(Emphasis Supplied)

15. It is thus evident that motorable distances from different way and labeled as 'B' were accepted by the competent authority for making of the payments and that first bills were also cleared on the strength thereof. He submits that notwithstanding the decision taken by the competent authority about the distance as reflected in table 'B', the Grievance Redressal Committee proceeded to return a finding contrary to the said decision where it was not competent to do so. The Food Corporation of India never raised a challenge to the above decision taken by the competent authority, after due verification of the distance in terms of Clause 5 of Part 'B' of the schedule of rates as appended to the DNIT.

ARGUMENTS BY RESPONDENT

16. Counsel for the respondent-Food Corporation of India on the other hand contends that the contention of the petitioner cannot be accepted in view of the terms and conditions of the tender documents as well as the

conditions as prescribed under Clause-2-B (ii) alongwith the averments contained in the forwarding letter and in para II of the Appendix 7. He contends that a bid at 110.85% over and above the schedule rate and services had been approved and it was a charge payable for 2 years and that the petitioner cannot seek a revision of the rate on any further pretext about taking a longer route. He places reliance on the order dated 06.01.2016 passed in ***CWP-26325 of 2014*** titled as ***"Gursewak Singh versus Food Corporation of India and others".*** The relevant extract thereof reads thus:-

> *The petitioner quoted 261% ASOR (Above Schedule of Rate) having an increase of 68.69% over the outgoing rate of the previous contract but since his rate was the lowest, therefore, the contract was awarded to him for a period of two years w.e.f. 20.09.2011 to 19.09.2013. After the award of the contract, the petitioner transported the specials till January 2012 through the aforesaid route but, thereafter, he started making representation that due to the construction of fly-over on the Railway Phatak, he had to undertake a longer route and had to incur more expenses on transportation. On the basis of that information, the payments were made but the Regional Office of the FCI constituted a Committee of three Managers for investigating the issue in which the Committee noticed that the movement of the trucks through a service lane adjoining the fly- over under construction is going on and even the petitioner was using the same, but the petitioner had claimed lacs of rupees on the pretext of transportation through a longer route by mis-representation of facts, therefore, the petitioner was served with a show cause notice dated 30.01.2013 and after his reply dated 06.02.2013, the*

Competent Authority passed the order dated 01.07.2013, to which a corrigendum was issued on 13.08.2014 whereby the recovery of Rs. 39,51,231/- has been effected as per the set-off Clause XI(b) and (e), according to the undertaking given by the petitioner, from the outstanding payments payable to the petitioner by the FCI.

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On the other hand, counsel for the respondents has submitted that after the appointment of the petitioner as TC of Budhlada Centre by Regional Office (PB), Chandigarh on 20.09.2011 for the period of two years w.e.f. 20.09.2011 to 19.09.2013, he transported the specials upto January 2012 but, thereafter, started making representations that due to construction of the fly-over on the Railway Phatak, he had to undertake a longer route, whereas according to the respondents, he has been using the sideway of the over-bridge and has claimed lacs of rupees on the pretext of longer route by misrepresentation. It is also submitted that it had been made known to the petitioner in the MTF itself that the rate has been fixed on point to point basis without indicating the route and in no circumstances, the request for change of route or alternate will be considered. Moreover, the petitioner had quoted 261% ASOR, which was having an increase of 68.69% over and above the outgoing rates of the previous contract, therefore, he was not entitled to claim damages from the FCI on the pretext of transportation through a longer route which was termed as misrepresentation. It is also submitted this question of facts cannot be decided in the writ petition and the remedy available to the petitioner is of the civil suit.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no error in the impugned order because it was specifically made clear in Clause XV of the MTF that the rates are fixed on point to point basis without indicating the route, which cannot be changed in any circumstance. Moreover, the petitioner was given liberty to quote any rate in terms of any route above the scheduled rates after considering the ground realities and the facts and circumstances especially when no future request was to be considered by the FCI and in the light thereof, the petitioner had quoted 261% ASOR, having an increase of 68.69% over and above the outgoing rate of the previous contract and cannot just rely upon any correspondence of the lower staff of the FCI, being himself bound by the terms and conditions of the contract.

Thus, keeping in view the totality of the facts and circumstances, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

17. It is thus strenuously argued that the said aspect has already been considered by this Court and claims under similar circumstances on account of the claim for having to take a longer route, were declined.

18. It is submitted that it was up to the petitioner to carry out due diligence before submission of the price bid and by not having done so, he cannot seek re-determination of the charges payable to him. Having already raised a bill of Rs. 10,94,735/- at 110.85% above the schedule rate for services, no further enhancement under the garb of a longer distance can be sought for by the petitioner.

REBUTTAL ARGUMENTS

19. Counsel for the petitioner, while controverting the aforesaid arguments, has contended that the said judgment would not be applicable to the facts of the present case for the following reasons:-

i) That in the present case, a Committee of Officers had been duly constituted to carry out a actual measurement of distances and to make recommendations. The shorter routes were ruled out by the Committee by specifically recording a finding that they were not motor-able and feasible for the specials to be loaded or unloaded and to be taken through the same. Whereas the committee report in the judgment of ***Gursewak Singh (supra)*** that has been referred to was to the opposite and it was informed that the service lane along the railway bridge was taken and the bill for longer route was wrongly claimed.

ii) That the Clause 5 of the part 'B' of the schedule of rates has not been referred to in the aforesaid judgment of ***Gursewak Singh (Supra)*** which empowers the Chief Engineer or any authority nominated by him to carry out an actual measurement of the distances. The said procedure had been followed in the present case whereas there is no such reference to the abovesaid procedure in the case of ***Gursewak Singh (Supra).***

(iii) It is further averred that the schedule of rates itself specified the rate to be submitted by the petitioner with respect to the metric tonne carriage capacity and that the distances were to be separate. A rate on the basis of distance was prescribed for the transportation of the food grains. Hence, the bill submitted by the petitioner @ 110.85% over and above the schedule of rate has to be read in the context of the schedule of rate and not with respect to the distance since there is no fixed prescribed distance in the DNIT. The said aspect has also not been taken into account in the judgment of ***Gursewak Singh (Supra).***

CONSIDERATION

20. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

21. Before proceeding further into the matter, certain relevant clauses that are relied upon by the Counsel for the respondents are extracted as under:-

> ***"Clause 2-B (II)***: *The tenderers must get themselves fully acquainted with the size and location of godowns vis-à-vis loading / unloading points before submission of tender and rates quoted by them for loading / unloading from trucks/wagons shall be deemed to have been done after such acquaintance. Once a tender is submitted by a party he shall be deemed to have fully acquainted himself with the size and location of godowns vis-à-vis loading/ unloading points and he shall not be entitled to any compensation arising out of any discrepancy in the size and location of godowns / group of godowns found later on, or on the ground that the workers employed by him are demanding higher rates of*

wages or load involved in certain operation(s) is more or the bags to be handled are heavier".

Xx xxx xxx xxx xxx xxx xx xxx xxx

"Para No. 2 of forwarding letter: *I have thoroughly examined and understood all the terms and conditions as contained in the Tender document, invitation to tender, General Information to Tenderer and its annexure & appendix and agree to abide by them".*

Xx xx xxxxxx xxx xxx xxx xxx xxx

"Para No. 2 of Price Bid Letter*: I have thoroughly examined and understood instructions to tenderers. Terms and conditions of contract as given in the invitation to tender titled as General Information to tenderer and those contained in General Conditions of contract and its annexure, appendix, and schedules and agreed to abide by them”*

22. On the other hand, certain other clauses of the DNIT would also be essential for adjudication of the present controversy. The same are extracted as under:-

Part-B PRICE BID FOR HTC UCHANA

Tender No. ***Dated 23.03.2013***

PRICE BID

SCHEDULE OF RATES AND SERVICES FOR HANDLING AND TRANSPORT CONTRACT AT FSD, UCHANA

Sr. No.	***Description of services***	***RATE PER HUNDRED BAGS***		
PART-1 Receipts Deliveries		*For bags*	*For bags*	*For bags*

<table>
<tr><td colspan="2"></td><td>weighing upto 40 kg.</td><td>weighing upto 50 kg.</td><td>weighing more 50 kg.</td></tr>
<tr><td colspan="5">Xx xxx xx xxx xx xxx xx xxx xx xxx xx xxx xx</td></tr>
<tr><td>2.</td><td>For transporting foodgrains bags to and from Railheads to the following godowns as mentioned in Clause-XIX, Part-1 (2)</td><td colspan="3">Rs. 157/- per 10 M.T. for the 1st one K.M. and Rs. 32/- for every additional half K.M. upto 8 K.M. and thereafter Rs. 16/- for every addl. Half K.M.</td></tr>
<tr><td colspan="5">Xx xxx xx xxx xx xxx xx xxx xx xxx xx xxx xx</td></tr>
<tr><td>7.</td><td>For transporting the foodgrain bags by trucks from one godown to another godown/railhead or any other place or vice-versa for which rates rate payable under item have not been specifically fixed, as mentioned Part. 1(2) in Clause-XIX, Part-1 (7).</td><td colspan="3">Rs. 157/- per 10 M.T. for the 1st one K.M. and Rs. 32/- for every additional half K.M. upto 8 K.M. and thereafter Rs. 16/- for every addl. Half K.M.</td></tr>
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Xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx

3. The transport charges are payable for the distance covered by loaded lorries / any other vehicle and not for distances covered on return journey or from garage to place of *loading or back to garage. Payment on net weight basis envisaged in the note above applies to handling operations also.*

4. Transport charges shall be payable for 1 kilometer when the distances covered by a loaded/lorry/any other vehicle per trip is less than one kilometer, for distance over one kilometer per trip, the distance covered by a lorry/any other vehicle shall in all cases be rounded off to the nearest 0.50 kms. (Applicable to item -7).

5. <u>The distance will be reckoned as fixed by the Chief Engineer PWD or any officer nominated by him or by the General Manager Food Corporation of India or checked by an officer acting on his behalf rounded off to the nearest 0.50 kms</u> (applicable to item-7).”

(Emphasis Supplied)

23. In terms of the aforesaid terms and conditions of part ‘B’ pertaining to price bid for Handling & Transport Contract, Uchana, it would be apposite to refer to the bid submitted by the petitioner and available as Appendix VII. The rate offered by the petitioner is extracted as under:-

3. 1/We offer to work on following rates, which includes all taxes, duties, cess etc.

i) At the rates given in the schedule of rates for services, or

ii) At 110.85 per cent (One hundred ten and paise eighty five only) (Indicate percentage in words) above the rates given in the schedule of rate for services, or

iii) At Nil per cent (Nil) (Indicate percentage in words) below the rates given in the schedule of rates for services, and it is confirmed that no other charges would be payable to me/us.

24. It is evident from a perusal of the above that the petitioner had submitted a bid @ 110.85% above the rates given in the schedule of rate for service. The schedule of rate as has been extracted above shows that the charge was mentioned at Rs. 157 per 10 metric tonne for the first 1 km and Rs. 32/- for every additional half kilometer upto 08 kilometers and thereafter Rs. 16/- for every additional half kilometer at Sr. No. 2 and as Rs. 157.10 metric tonne for the 1st one kilometer and Rs. 32/- for every additional half kilometer upto 08 kilometers and Rs. 16/- for every additional half kilometer thereafter under serial No. 07.

25. It is evident from a perusal of the clauses that while rate for the bags was a fixed component in the bid to be submitted, the distance was not prescribed in the tender. Only the rate for different distances was specified. No clause of the tender notice has been referred to by the Counsel for the respondent-Food Corporation of India that any distance was prescribed in the tender notice or that any maximum transportation distance had been capped.

26. Rather, a conjoint reading of Clause 3. 4 and 5 of the tender notice establish that transport charges were payable for the distance covered by the lorries and further as per Clause 4, for distance over 1 km per trip, the distance is to be rounded off to the nearest half a kilometer. It is in the said context that Clause 5 empowers the Chief Engineer, PWD to determine the distance for which the charge becomes payable.

27. The sequence of events also shows immediately on issuance of letter of work allotment on 17.07.2013, a letter for distance measurement

was sent by the petitioner on 26.07.2013. The respondents also constituted the Committee for such measurement as well and had taken a specific decision on actual distance for which payment was to be made. This was followed by making payment for the said distances as well. Hence, it was a clear understanding of the parties as well that payment had to be made for the actual distance travelled.

28. Clause 5 of the part 'B' of the Price bid for Handling & Transport Contract, Uchana specifically empowered the competent authority to carry out a measurement of the distance followed by an exercise actually undertaken by the respondent-Food Corporation of India for carrying out such measurement. The recommendation of the route and the distances were also approved by the competent authority, as per the information furnished to the petitioner under the Right to Information Act, 2005, in as per which distances for different routes mentioned under 'Column B' were accepted and payments were also made. Such an acceptance would amount to be the measurement undertaken by the competent authority in exercise of the powers under Clause 5 of the part 'B' pertaining to the schedule of rates as approved.

29. Further, insofar as the reliance on Clause 2 B (II) is concerned, the same is in relation to a description of work and the object of the contract where a tenderer was required to be acquainted himself with the size and location of the godown viz. a viz. loading/unloading points before submission of the tender and the rates quoted by them for loading/unloading contract and the quote shall be deemed to have been taken after such an

acquaintance. The said clause is not in relation to and does not determine the distances for which any payment is to be made. Reference to the same is out of contract and without even understanding of the terms and scheme of the tender. A reading of the said clause nowhere suggests that the same was laying on the pricing condition and it was only in the context of work description only. Undisputedly, even the price bid submitted by the petitioner in Appendix VII does not specify any distance for which such rate has been quoted. Hence, it cannot *ipso facto* be read into the price bid or the schedule of rates, as approved, that the distance stood determined. After the determination of a distance undertaken by the competent authority and a decision taken, accepting the report submitted by a Committee constituted by the respondents, it does not lie with the Food Corporation of India to deny such determination and acceptance of the recommendations by the competent authority. The acceptance of the decision pertaining to the distances was never a subject matter of challenge before the Grievance Redressal Committee and it seems that it was later in point time that the respondents chose to retract from their decision about the actual distance and withheld the payments from the subsequent bills.

30. Now adverting to the reliance placed on the judgment of this Court in the matter of ***Gursewak Singh (Supra),*** I find that the said judgment would not apply to the facts of the present case. Various provisions in relation to part 'B', the terms and conditions of Part 'B' including the mode and methodology of determination of the distance as also the import of the rate pertaining to the weight as well as the distance, which was a variable content of the price bid, submitted have not been taken into

consideration in the said judgment. Additionally, the reasons as cited by the petitioner while rebutting the applicability of the said judgment are well drawn and based upon a comparative study of the facts of each case.

31. In view of the above, I find that the order passed by the Grievance Redressal Committee is not based upon correct interpretation of the terms and conditions of the tender document and the conditions incorporated therein. The said order is hence held bad.

32. The present writ petition is consequentially allowed. The order dated 04.01.2019 (Annexure P-19) passed by the Grievance Redressal Committee, Food Corporation of India is set aside. The respondents are directed to make the payment in terms of the distances as approved by the Committee as per the report accepted by the competent offices of the respondent-Food Corporation of India itself. Let the aforesaid exercise be completed by the respondents within a period of three months of a receipt of certified copy of this order and the admissible payment be released to the petitioner alongwith interest @ 6% per annum.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 01, 2024
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No